

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Select Comfort Corporation; and
Select Comfort SC Corporation,

Court File No. 12-cv-2899-DWF-SER

Plaintiffs,

V.

**AFFIDAVIT OF
DENNIS E. HANSEN**

John Baxter; Dires, LLC d/b/a Personal Touch Beds and Personal Comfort Beds; Digi Craft Agency, LLC; Direct Commerce, LLC d/b/a Personal Touch Beds; Scott Stenzel; and Craig Miller,

Defendants.

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I, Dennis E. Hansen, being first duly sworn upon oath, states:

1. I am an attorney with the firm Oppenheimer Wolff & Donnelly LLP, counsel for Plaintiffs Select Comfort Corporation and Select Comfort SC Corporation (“Select Comfort”). I am admitted to practice before this Court. I submit this Affidavit in support of Plaintiffs’ Memorandum of Law in Support of Their Motion for Partial Summary Judgment. I have personal knowledge of the facts set forth in this Affidavit, and, if called on as a witness, I could and would competently testify as to the matters set forth herein.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the Supplemental Answers to Plaintiff's First Set of Interrogatories to Defendants Nos. 2, 4, and 18, dated November 22, 2013.

3. Attached hereto as **Exhibit 2** is a true and correct copy of the transcript of the deposition of Scott Stenzel, taken January 7, 2015.

4. Attached hereto as **Exhibit 3** is a true and correct copy of the transcript of the deposition of John Baxter, taken March 25, 2014.

5. Attached hereto as **Exhibit 4** is a true and correct copy of excerpts of the transcript of the deposition of Marc Barriger, taken on October 16, 2014.

6. Attached hereto as **Exhibit 5** is a true and correct copy of Plaintiffs' Supplemental Answers to Defendants First Set of Interrogatories, dated December 16, 2013.

7. Attached hereto as **Exhibit 6** is a true and correct copy of the transcript of the deposition of John Baxter, taken July 10, 2015.

8. Attached hereto as **Exhibit 7** is a true and correct copy of Supplemental Answers to Plaintiff's First Set of Interrogatories to Defendants Nos. 1, 2, 5, 6, 8, 10, 11, 12, 20, 21, 22, and 23, dated October 2, 2013.

9. Attached hereto as **Exhibit 8** is a true and correct copy of the two transcripts of the 30(b)(6) deposition of Dires LLC (Craig Miller as designee), taken March 26, 2015 and May 19, 2015.

10. Attached hereto as **Exhibit 9** is a true and correct copy of the transcript of the deposition of Craig Miller, taken March 25, 2015.

11. Attached hereto as **Exhibit 10** is a true and correct copy of a document produced by Defendants and bates labeled as DIRX0000625, which is a web capture of the Personal Touch home page.

12. Attached hereto as **Exhibit 11** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0008634, which is an email from L. Fox to a customer dated January 12, 2103. An unredacted¹ version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

13. Attached hereto as **Exhibit 12** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0022818, which is a Skype chat between R. Smith and M. Stewart dated December 11, 2012.

14. Attached hereto as **Exhibit 13** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0000146, which was marked as Deposition Exhibit 267 and is an email thread and attachment from info@personalcomfortbed.com to operator@personalcomfortbed.com dated January 15, 2012.

15. Attached hereto as **Exhibit 14** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0000504, which is a LiveChat Message between Sarah and a customer dated June 11, 2013, marked as Deposition Exhibit 117.

¹ Pursuant to paragraph 17 of the protective order, Plaintiffs informed Defendants on August 17, 2015 that they intended to file certain confidentially-designated exhibits publicly. In response, Defendants requested that Plaintiffs redact customer information, including full names, addresses, e-mail addresses and phone numbers of Defendants' customers.

An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

16. Attached hereto as **Exhibit 15** is a true and correct copy of a web capture of the Personal Comfort website, <http://www.personalcomfortbed.com/pages/Compare-to-Sleep-Number.html>, marked as Deposition Exhibit 302.

17. Attached hereto as **Exhibit 16** is a true and correct copy of the transcript of the deposition of Sarah Davis, taken March 26, 2014.

18. Attached hereto as **Exhibit 17** is a true and correct copy of a web capture of the Personal Comfort website, <http://www.personalcomfortbed.com/pages/About-Us.html>, excerpted from Deposition Exhibit 286.

19. Attached hereto as **Exhibit 18** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0009348, which is an audio file. Also included in the exhibit is a true and correct transcription of the audio file. The audio portion of this exhibit has been filed conventionally due to being non-graphical and under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information, and an unredacted version of the transcript is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

20. Attached hereto as **Exhibit 19** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0008691, which is an email and attachment from Sarah to Lily dated May 15, 2013, marked as Deposition Exhibit 109. Also included in the exhibit is a true and correct transcription of the audio file, which

transcription was marked as Deposition Exhibit 109A. The audio portion of this exhibit has been filed conventionally due to being non-graphical and under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information, and an unredacted version of the exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

21. Attached hereto as **Exhibit 20** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0014379, which is an audio file. Also included in the exhibit is a true and correct transcription of the audio file, which was marked as Deposition Exhibit 122. The audio portion of this exhibit has been filed conventionally due to being non-graphical.

22. Attached hereto as **Exhibit 21** is a true and correct copy of true and correct copy of a document produced by Defendants and bates labeled as DIR0010976, which is an audio file. Also included in the exhibit is a true and correct transcription of the audio file. The audio file and transcript were marked as Deposition Exhibits 184 and 184A. The audio portion of this exhibit has been filed conventionally due to being non-graphical.

23. Attached hereto as **Exhibit 22** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0009178, which is an audio file. Also included in the exhibit is a true and correct transcription of the audio file. The audio portion of this exhibit has been filed conventionally due to being non-graphical and under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information, and an unredacted version of the transcript is being filed under seal

pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

24. Attached hereto as **Exhibit 23** is a true and correct copy of the transcript of the deposition of Britney Dukes, taken October 15, 2014.

25. Attached hereto as **Exhibit 24** is a true and correct copy of the transcript of the deposition of James Gates, taken October 15, 2014.

26. Attached hereto as **Exhibit 25** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0000148, which is part of what was marked as Deposition Exhibit 366 and is an email thread from J. Baxter to operator@personalcomfortbed.com dated January 8, 2013, marked as part of Deposition Exhibit 366. The attachment produced with the email chain reflected in DIR0000148 is attached hereto as Exhibit 26.

27. Attached hereto as **Exhibit 26** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0009178, which is an audio file. Also included in the exhibit is a true and correct transcription of the audio file. The audio file was marked as part of Deposition Exhibit 366. The transcript was marked as Deposition Exhibit 367. The audio portion of this exhibit has been filed conventionally due to being non-graphical.

28. Attached hereto as **Exhibit 27** is a true and correct copy of a document produced by Defendants and bates labeled as DIRX0000673, which is a Personal Touch Bed Return Material Authorization (RMA) Form. An unredacted version of this exhibit

is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

29. Attached hereto as **Exhibit 28** is a true and correct copy a document produced by Defendants and bates labeled as DIR0009394, which is of an audio file. Also included in the exhibit is a true and correct transcription of the audio file. The audio portion of this exhibit has been filed conventionally due to being non-graphical and under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information, and an unredacted version of the transcript is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

30. Attached hereto as **Exhibit 29** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0009882, which is an audio file. Also included in the exhibit is a true and correct transcription of the audio file. The audio portion of this exhibit has been filed conventionally due to being non-graphical and under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information, and an unredacted version of the transcript is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

31. Attached hereto as **Exhibit 30** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0009379, which is an audio file. Also included in the exhibit is a true and correct transcription of the audio file. The audio portion of this exhibit has been filed conventionally due to being non-graphical and under

seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information, and an unredacted version of the transcript is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

32. Attached hereto as **Exhibit 31** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0019689, which is an email thread between S. Davis, C. Johnson and a customer dated January 17, 2014, marked as Deposition Exhibit 301. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

33. Attached hereto as **Exhibit 32** is a true and correct copy of an email from J. Baxter to L. Jones dated June 27, 2010, produced with bates number CC00000222 and marked as Deposition Exhibit 345.

34. Attached hereto as **Exhibit 33** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0004056, which is an email from info@personalcomfortbed.com to a customer dated December 31, 2012. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

35. Attached hereto as **Exhibit 34** is a true and correct copy of a document produced by Defendants and bates labeled as DIR001897, which is titled "Personal Comfort Bed All In One Mattress Technology."

36. Attached hereto as **Exhibit 35** is a true and correct copy of a web capture of the American National About Us page, <http://www.americannationalmfg.com/about-us>, produced with bates number SCC00073362 and marked as Deposition Exhibit 231.

37. Attached hereto as **Exhibit 36** is a true and correct copy of a web capture of an internet search for “number bed” on the search engine Bing dated August 19, 2015.

38. Attached hereto as **Exhibit 37** is a true and correct copy of correspondence from S. Horace to S. Hellfeld dated September 11, 2014, produced with bates number SCC00078611.

39. Attached hereto as **Exhibit 38** is a true and correct copy of a web capture of an internet search for “Sleep Number bed” on the search engine Google dated June 10, 2013, produced with bates number SCC00062291.

40. Attached hereto as **Exhibit 39** is a true and correct copy of a web capture of an internet search for “sleep number” on the search engine Google dated April 10, 2014, produced with bates number SCC00068822.

41. Attached hereto as **Exhibit 40** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0000265, which is titled A Personal Comfort Bed Campaign Report dated March 9, 2013 and was marked as Deposition Exhibit 251.

42. Attached hereto as **Exhibit 41** is a true and correct copy of Plaintiff’s Revised Second Supplemental Answer to Defendants’ Interrogatory No. 4 and Attachments A-F, dated April 10, 2015. Attachments A-F are filed conventionally due to being voluminous.

43. Attached hereto as **Exhibit 42** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0024104, which is a spreadsheet titled Ad_4_29_2014_personalcomfort01.xlsx, filed conventionally due to being voluminous, and filed under seal pursuant to the Protective Order.

44. Attached hereto as **Exhibit 43** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0024330, which is a spreadsheet titled Ad_12_20_2014_personalcomfort01.xlsx, filed conventionally due to being voluminous, and filed under seal pursuant to the Protective Order.

45. Attached hereto as **Exhibit 44** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0024331, which is spreadsheet titled Ads Report 12.20.14.xls, filed conventionally due to being voluminous, and filed under seal pursuant to the Protective Order.

46. Attached hereto as **Exhibit 45** is a true and correct copy of a document produced by Defendants and bates labeled as DIRX0006209, which is a spreadsheet titled PTB-Ad report.cvs, filed conventionally due to being voluminous, and filed under seal pursuant to the Protective Order.

47. Attached hereto as **Exhibit 46** is a true and correct copy of a document produced by Defendants and bates labeled as DIRX0006620, which is a spreadsheet titled Ad report.cvs, filed conventionally due to being voluminous, and filed under seal pursuant to the Protective Order.

48. Attached hereto as **Exhibit 47** is a true and correct copy of a spreadsheet analytics report, bates labeled MS000008, produced by Microsoft Online, Inc. in

response to a subpoena under Federal Rule of Civil Procedure 45. This exhibit is filed conventionally due to being voluminous, and filed under seal pursuant to the Protective Order.

49. Attached hereto as **Exhibit 48** is a true and correct copy of a web capture of an internet search for “Select Comfort” on the search engine Yahoo dated July 3, 2013, produced with bates number SCC00063673.

50. Attached hereto as **Exhibit 49** is a true and correct copy of a web capture of an internet search for “Comfortaire” on the search engine Google dated March 12, 2014, produced with bates number SCC00065210.

51. Attached hereto as **Exhibit 50** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0001406, which is an email thread between S. Stenzel, C. Miller and R. Anderson dated May 18, 2013.

52. Attached hereto as **Exhibit 51** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0001166, which is an email thread between S. Stenzel and R. Anderson dated June 4, 2013.

53. Attached hereto as **Exhibit 52** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0018401, which is a TextLinkBrokers Monthly Report dated July 23, 2013 and was marked as Deposition Exhibit 313.

54. Attached hereto as **Exhibit 53** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0018577, which is a TextLinkBrokers Monthly Report dated December 23, 2013.

55. Attached hereto as **Exhibit 54** is a true and correct copy of a spreadsheet produced by TextLinkBrokers in response to a subpoena under Federal Rule of Civil Procedure 45, which was marked as Deposition Exhibit 17.

56. Attached hereto as **Exhibit 55** is a true and correct copy of a document produced by TextLinkBrokers in response to a subpoena under Federal Rule of Civil Procedure 45 and bates labeled as TLB000378, which is TextLinkBrokers Monthly Report dated April 30, 2014 and was marked as Deposition Exhibit 23. This exhibit is filed under seal pursuant to the Protective Order.

57. Attached hereto as **Exhibit 56** is a true and correct copy of a document produced by TextLinkBrokers in response to a subpoena under Federal Rule of Civil Procedure 45 and bates labeled as TLB000035, which is an email from Anderson to S. Stenzel with attachments dated May 30, 2014 and was marked as Deposition Exhibit 26. This exhibit is filed under seal pursuant to the Protective Order.

58. Attached hereto as **Exhibit 57** is a true and correct copy of a web capture of the Get Holistic Health website, <http://www.getholistichealth.com/3398/establish-sound-sleeping-patterns-to-promote-sleep-hygiene> dated February 23, 2015, marked as Deposition Exhibit 21.

59. Attached hereto as **Exhibit 58** is a true and correct copy of a web capture of the Somali Land Center website, <http://somalilandcenter.com/275/how-you-can-choose-a-high-quality-mattress> dated February 23, 2015, marked as Deposition Exhibit 19.

60. Attached hereto as **Exhibit 59** is a true and correct copy of excerpts of the transcript of the deposition of Peter Kent, taken June 11, 2015.

61. Attached hereto as **Exhibit 60** is a true and correct copy of a web capture of the LR02 website, <http://lr02.com/how-to-make-peace-with-an-insomniac-spouse/>, captured August 11, 2015.

62. Attached hereto as **Exhibit 61** is a true and correct copy of a web capture of the Real Estate's Directory's website, <http://realestatedirectory.net/how-to-select-the-perfect-bed-for-your-home.html>, captured August 11, 2015.

63. Attached hereto as **Exhibit 62** is a true and correct copy of a web capture of the Get Holistic Health website, <http://www.getholistichealth.com/33201/restless-nights-non-drug-interventions-for-coping-with-insomnia/>, captured August 11, 2015.

64. Attached hereto as **Exhibit 63** is a true and correct copy of a web capture of the Get Holistic Health website, <http://www.getholistichealth.com/33398/establish-sound-sleeping-patterns-to-promote-sleep-hygiene/>, captured August 11, 2015.

65. Attached hereto as **Exhibit 64** is a true and correct copy of a web capture of the Get Holistic Health website, <http://www.moneyfile.net/money-saving-tips/tips-for-remodeling-your-bedroom-on-a-budget>, captured August 11, 2015.

66. Attached hereto as **Exhibit 65** is a true and correct copy of document produced by Defendants and bates labeled as DIR0015149, which is a Personal Comfort display advertisement.

67. Attached hereto as **Exhibit 66** is a true and correct copy of a document produced by Defendants bates labeled as DIRX0000691, which is a Personal Touch display advertisement.

68. Attached hereto as **Exhibit 67** is a true and correct copy of a document produced by Defendants bates labeled as DIRX0005606, which is an email thread between J. Baxter and S. Stenzel dated May 17, 2102 and was marked as Deposition Exhibit 342.

69. Attached hereto as **Exhibit 68** is a true and correct copy of a document produced by Defendants bates labeled as DIRX0004942, which is an email from S. Stenzel to J. Baxter dated May 17, 2012 and was marked as Deposition Exhibit 343.

70. Attached hereto as **Exhibit 69** is a true and correct copy of a document produced by Defendants bates labeled as DIRX0004941, which is an email from S. Stenzel to J. Baxter dated May 17, 2012 and was marked as Deposition Exhibit 22.

71. Attached hereto as **Exhibit 70** is a true and correct copy of a web capture of the Personal Comfort website, <http://www.personalcomfortbed.com/>, excerpted from Deposition Exhibit 286.

72. Attached hereto as **Exhibit 71** is a true and correct copy of a web archive capture from the Internet Archive Wayback Machine of the Personal Comfort Bed home page for the date June 1, 2013, <http://web.archive.org/web/20130601051201/http://www.personalcomfortbed.com>, captured on August 11, 2015.

73. On August 19, 2015, I captured the following screenshots from the Personal Comfort Bed home page, <http://www.personalcomfortbed.com>.

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The Sleep Number® Bed versus Personal Comfort® Bed Comparison.

The future of the bedding industry starts with the ability to personalize the comfort of your air mattress. The Personal Comfort® Bed's revolutionary hand control system, allows instant touch of a button comfort whenever you desire. High quality components, and state of the art technology make the Personal Comfort® Bed a consumer best buy.

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Personal Comfort® Bed - Adjust Your Sleep Experience™

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*No sales tax is collected outside the state of Florida. Financing promotions require pre-qualification and are available with approved credit.

74. Attached hereto as **Exhibit 72** is a true and correct copy of a document produced by Defendants bates labeled as DIR0003212, which is titled SeoMoz Personal Comfort On-Page Report Card, dated November 12, 2012 and was marked as Deposition Exhibit 362.

75. Attached hereto as **Exhibit 73** is a true and correct copy of the meta-information of the Personal Comfort Website, produced with bates number SCC00073652 and marked as Deposition Exhibit 207.

76. On August 18, 2015, I reviewed Exhibit 73 and the current Personal Comfort Bed home page, <http://www.personalcomfortbed.com>, using the “View Source” function. I counted more than 50 uses of Plaintiffs’ trademarks in the meta-information in each version of the website.

77. Attached hereto as **Exhibit 74** is a true and correct copy of a web archive capture from the Internet Archive Wayback Machine of the MattressQuote home page for the date July 7, 2013, <http://web.archive.org/web/20130707013919/http://www.mattressquote.com>, captured on August 19, 2015.

78. Attached hereto as **Exhibit 75** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0008350, which is an email thread between B. Jones, Mattress Quote Leads, and a customer, dated January 31, 2013. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

79. Attached hereto as **Exhibit 76** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0007942, which is an email thread from R. Smith to 32-operator dated December 13, 2012, marked as Deposition Exhibit 346. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

80. Attached hereto as **Exhibit 77** is a true and correct copy of a document produced by Defendants bates labeled as DIR0002015, which is an email thread between R. Smith and a customer dated December 13, 2012 and was marked as Deposition Exhibit 347. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

81. Attached hereto as **Exhibit 78** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0018927, which is an email thread between R. Smith and a customer dated December 20, 2012, marked as Deposition Exhibit 348. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

82. Attached hereto as **Exhibit 79** is a true and correct copy of a letter from A. Trampe to D. Karr with enclosures dated March 11, 2011, produced as bates number CC00000012 and marked as Deposition Exhibit 22.

83. Attached hereto as **Exhibit 80** is a true and correct copy of the Settlement Agreement and Mutual Release between Select Comfort Corporation and Comfortaire Corporation, dated May 23, 2012, produced as bates number SCC00006428 and marked as Deposition Exhibit 339.

84. Attached hereto as **Exhibit 81** is a true and correct copy of an email and attachment from J. Baxter to D. Karr dated March 8, 2012, produced as bates number CC00000793 and marked as Deposition Exhibit 31.

85. Attached hereto as **Exhibit 82** is a true and correct copy of an email thread between J. Baxter and D. Karr dated March 9, 2012, produced as bates number CC00002754 and marked as Deposition Exhibit 32.

86. Attached hereto as **Exhibit 83** is a true and correct copy of an email and attachments from D. Karr to J. Baxter dated April 4, 2012, produced as bates number CC00002838 and marked as Deposition Exhibit 33.

87. Attached hereto as **Exhibit 84** is a true and correct copy of an email thread between D. Karr and J. Baxter dated April 11, 2012, produced as bates number CC00002835 and marked as Deposition Exhibit 340.

88. Attached hereto as **Exhibit 85** is a true and correct copy of an email from J. Baxter to D. Karr, J. Orders and E. Rose dated July 26, 2012, produced as bates number CC00000731.

89. Attached hereto as **Exhibit 86** is a true and correct copy of a document produced by Defendants bates labeled as DIRX0005442, which is an email from J. Baxter to S. Stenzel dated July 26, 2012, marked as Deposition Exhibit 41.

90. Attached hereto as **Exhibit 87** is a true and correct copy of an email thread between J. Baxter and D. Karr dated May 22, 2012, produced as bates number CC00002879 and marked as Deposition Exhibit 35.

91. Attached hereto as **Exhibit 88** is a true and correct copy of an email from J. Baxter to D. Karr and E. Rose dated October 6, 2010, produced as bates number CC00001649.

92. Attached hereto as **Exhibit 89** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0021983, which is a Skype chat between N. James and M. Stewart dated August 5, 2013.

93. Attached hereto as **Exhibit 90** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0021248, which is a Skype chat between S. Davis and N. James dated July 9, 2013.

94. Attached hereto as **Exhibit 91** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0022773, which is a Skype chat between M. Stewart and R. Smith dated November 20, 2012, marked as Deposition Exhibit 349.

95. Attached hereto as **Exhibit 92** is a true and correct copy of a document produced by Defendants and bates labeled as DIRX0005318, which is an email from J. Baxter to C. Miller dated April 10, 2012, marked as Deposition Exhibit 351.

96. Attached hereto as **Exhibit 93** is a true and correct copy of a document produced by Defendants and bates labeled as DIRX0005568, which is an email and attachments from J. Baxter to C. Miller dated May 22, 2012, marked as Deposition Exhibit 55.

97. Attached hereto as **Exhibit 94** is a true and correct copy of a document produced by Defendants and bates labeled as DIRX0001771, which is an email from J. Baxter to S. Stenzel dated November 2, 2011, marked as Deposition Exhibit 8.

98. Attached hereto as **Exhibit 95** is a true and correct copy of an email and attachment from G. Mitchell to info@personaltouchbed.com dated June 20, 2012, produced as bates number SCC00015720 and marked as Deposition Exhibit 48.

99. Attached hereto as **Exhibit 96** is a true and correct copy of a document produced by Defendants and bates labeled as DIRX0000708, which is a letter from K. Brown to G. Mitchell dated June 30, 2012, marked as Deposition Exhibit 49.

100. Attached hereto as **Exhibit 97** is a true and correct copy of an email thread between M. Stewart and G. Mitchell dated June 20, 2012, produced as bates number SCC00015727.

101. Attached hereto as **Exhibit 98** is a true and correct copy of a chart served by Defendants titled Dires Employees List of Aliases Used, dated December 6, 2013.

102. Attached hereto as **Exhibit 99** is a true and correct copy of an email and attachment from J. Garcia to K. Brown dated September 11, 2012, produced as bates number SCC00007378.

103. Attached hereto as **Exhibit 100** is a true and correct copy of a document produced by Defendants and bates labeled as DIRX0006540, which is an email thread between S. Stenzel and J. Baxter dated September 12, 2012, marked as Deposition Exhibit 352.

104. Attached hereto as **Exhibit 101** is a true and correct copy of an email thread and attachment between K. Brown and J. Garcia dated September 12, 2012, produced as bates number SCC00007381.

105. Attached hereto as **Exhibit 102** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0002577, which is an email thread between J. Baxter and S. Stenzel dated September 19, 2012, marked as Deposition Exhibit 62.

106. Attached hereto as **Exhibit 103** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0022746, which is a Skype chat from R. Smith dated November 9, 2012, marked as Deposition Exhibit 63.

107. Attached hereto as **Exhibit 104** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0001930, which is an email from J. Baxter to C. Miller dated November 19, 2012, marked as Deposition Exhibit 64.

108. Attached hereto as **Exhibit 105** is a true and correct copy of a Trademark Snap Shot Amendment and Mail Processing Stylesheet, Note to File and Office Action, produced as bates number SCC00069400.

109. Attached hereto as **Exhibit 106** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0018022, which is an email between S. Davis and S. Stenzel dated August 26, 2013, marked as Deposition Exhibit 115.

110. Attached hereto as **Exhibit 107** is a true and correct copy of a spreadsheet titled Marketing Expense History 1-30-15.xlsx, produced as bates number SCC00078605, filed under seal pursuant to the Protective Order.

111. Attached hereto as **Exhibit 108** is a true and correct copy of a spreadsheet titled Net Sales History – actual 1-30-15.xlsx, produced as bates number SCC00078607, filed conventionally due to being voluminous, and filed under seal pursuant to the Protective Order.

112. Attached hereto as **Exhibit 109** is a true and correct copy of a PowerPoint presentation titled “Sleep Number Brand Tracker” dated March 6, 2013, produced as bates number SCC00029484, filed under seal pursuant to the Protective Order.

113. Attached hereto as **Exhibit 110** is a true and correct copy of a web capture of the Personal Comfort website, <http://www.personalcomfortbed.com/pages/Compare-to-Sleep-Number.html>, excerpted from Deposition Exhibit 286.

114. Attached hereto as **Exhibit 111** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0021828, which is a Skype chat between J. Baxter, B. Jones, and L. Fox dated February 11, 2013, marked as Deposition Exhibit 295.

115. Attached hereto as **Exhibit 112** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0021661, which is a Skype chat between S. Davis and N. James dated October 24, 2013, marked as Deposition Exhibit 299.

116. Attached hereto as **Exhibit 113** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0017258, which is an email thread between N. James, M. Stewart, C. Miller, and a customer dated November 27, 2013. An

unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

117. Attached hereto as **Exhibit 114** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0021832, which is a Skype chat between B. Jones and M. Stewart dated February 12, 2013.

118. Attached hereto as **Exhibit 115** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0021220, which is a Skype chat between N. James, L. Tindell, and M. Stewart dated June 1, 2013. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

119. Attached hereto as **Exhibit 116** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0021308, which is a Skype chat between L. Price and S. Davis dated August 21, 2013.

120. Attached hereto as **Exhibit 117** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0021344, which is a Skype chat between N. James, S. Davis, and M. Stewart dated October 10, 2013.

121. Attached hereto as **Exhibit 118** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0021657, which is a Skype chat between J. Miller and S. Davis dated October 14, 2013. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

122. Attached hereto as **Exhibit 119** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0021422, which is a Skype chat between C. Johnson and N. James dated December 19, 2013. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

123. Attached hereto as **Exhibit 120** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0021583, which is a Skype chat between C. Johnson and N. James dated December 13, 2013.

124. Attached hereto as **Exhibit 121** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0020570, which is a Skype chat between N. James and S. Davis dated August 22, 2013. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

125. Attached hereto as **Exhibit 122** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0021609, which is a Skype chat between N. James and M. Stewart dated December 27, 2013.

126. Attached hereto as **Exhibit 123** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0020360, which is a Skype chat between N. James and J. Miller dated October 31, 2013.

127. Attached hereto as **Exhibit 124** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0022784, which is a Skype chat

between M. Stewart and R. Smith dated November 23, 2012, marked as Deposition Exhibit 293.

128. Attached hereto as **Exhibit 125** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0000658, which is a LiveChat Message between Bell and a customer dated January 24, 2013. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

129. Attached hereto as **Exhibit 126** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0000554, which is a LiveChat Message between Lilly and a customer dated April 25, 2013. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

130. Attached hereto as **Exhibit 127** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0015983, which is a LiveChat Message between Jordan and a customer dated August 28, 2013. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

131. Attached hereto as **Exhibit 128** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0019338, which is an email thread between J. Miller and a customer dated December 11, 2013. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

132. Attached hereto as **Exhibit 129** is a true and correct copy of a document produced by Defendants and bates numbered as DIR0010372, which is an audio file. Also included in the exhibit is a true and correct transcription of the audio file. The audio portion of this exhibit has been filed conventionally due to being non-graphical and under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information, and an unredacted version of the transcript is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

133. Attached hereto as **Exhibit 130** is a true and correct copy of a document produced by Defendants and bates numbered as DIR0010876, which is an audio file. Also included in the exhibit is a true and correct transcription of the audio file. The audio file and transcript were marked as Deposition Exhibits 182 and 182A. The audio portion of this exhibit has been filed conventionally due to being non-graphical and under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information, and an unredacted version of the transcript is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

134. Attached hereto as **Exhibit 131** is a true and correct copy of a document produced by Defendants and bates numbered as DIR0010974, which is an audio file. Also included in the exhibit is a true and correct transcription of the audio file. The audio file and transcript were marked as Deposition Exhibits 183 and 183A. The audio portion of this exhibit has been filed conventionally due to being non-graphical.

135. Attached hereto as **Exhibit 132** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0000162, which is an email thread between N. James and a customer dated October 11, 2012, marked as Deposition Exhibit 292. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

136. Attached hereto as **Exhibit 133** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0008215, which is an email from M. Taylor to operator@personalcomfortbed.com dated May 12, 2013.

137. Attached hereto as **Exhibit 134** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0020285, which is a Skype chat by N. James dated February 28, 2013.

138. Attached hereto as **Exhibit 135** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0017271, which is an email from N. James to operator@personalcomfortbed.com dated August 12, 2013, marked as Deposition Exhibit 297.

139. Attached hereto as **Exhibit 136** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0022373, which is a Skype chat between S. Davis and J. Miller dated August 11, 2013.

140. Attached hereto as **Exhibit 137** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0021824, which is a Skype chat between B. Jones and N. James dated February 8, 2013, marked as Deposition Exhibit

294. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

141. Attached hereto as **Exhibit 138** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0015946, which is a LiveChat Message between Sarah and a customer dated September 10, 2013. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

142. Attached hereto as **Exhibit 139** is a true and correct copy of Defendant Dires, LLC's Answers to Plaintiffs' Third Set of Interrogatories, dated April 3, 2014.

143. Attached hereto as **Exhibit 140** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0005874, which is an email thread between a R. Baxter and a customer dated November 12, 2012. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

144. Attached hereto as **Exhibit 141** is a true and correct copy of a document produced by Defendants, and bates labeled as DIR0000499, which is a LiveChat Message between Courtney and a customer dated June 20, 2013. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

145. Attached hereto as **Exhibit 142** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0002496, which is an email thread between J. Baxter and S. Stenzel dated November 20, 2012.

146. Attached hereto as **Exhibit 143** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0001451, which is an email thread between S. Stenzel and J. Baxter dated November 26, 2012.

147. Attached hereto as **Exhibit 144** is a true and correct copy of a web capture of the Personal Comfort website, <http://www.personalcomfortbed.com/pages/Personal-Comfort-Controllers>, excerpted from Deposition Exhibit 286.

148. Attached hereto as **Exhibit 145** is a document produced by Defendants and bates labeled as DIR0005166, which is a true and correct copy of a Personal Comfort Owner's Manual.

149. Attached hereto as **Exhibit 146** is a true and correct copy of Document produced by Defendants and bates labeled as DIR0000535, which is a LiveChat Message between Courtney and a customer dated May 15, 2013. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

150. Attached hereto as **Exhibit 147** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0000542, which is a LiveChat Message between Lilly and a customer dated May 9, 2013. An unredacted version of this exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

151. Attached hereto as **Exhibit 148** is a true and correct copy of a document produced by Defendants and bates labeled as DIR0000589, which is a LiveChat Message between Lilly and a customer dated March 11, 2013. An unredacted version of this

exhibit is being filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order due to inclusion of customer information.

152. Attached hereto as **Exhibit 149** is a true and correct copy of the Supplemental Answers to Plaintiff's First Set of Interrogatories to Defendants Nos. 1, 2, 5, 6, 8, 10, 11, 12, 20, 21, 22, and 23, dated October 2, 2013.

153. Attached hereto as **Exhibit 150** is a true and correct copy of the Answers to Plaintiffs' First Set of Interrogatories to Defendant Scott Stenzel, dated January 30, 2014.

154. Attached hereto as **Exhibit 151** is a true and correct copy of the Answers to Plaintiffs' First Set of Interrogatories to Defendant Craig Miller, dated January 30, 2014.

155. Attached hereto as **Exhibit 152** is a true and correct copy of the Affidavit of Renee Marino and expert report of Renee Marino, with Exhibits 1-13. Exhibit A to the Affidavit of Renee Marino is filed under seal pursuant to Fed. R. Civ. P. 5.2 and/or the Protective Order.

156. Attached hereto as **Exhibit 153** is a true and correct copy of the Affidavit of Hal Poret and expert report of Hal Poret, with Appendices A-F. Appendix E is filed conventionally due to being voluminous.

157. Attached hereto as **Exhibit 154** is a true and correct copy of the Affidavit of Sarah Butler and expert report of Sarah Butler, with Exhibits A-E.

FURTHER AFFIANT SAYETH NOT.

Dated: August 21, 2015

s/Dennis E. Hansen

Dennis E. Hansen

Subscribed and sworn to before me
this 21st day of August, 2015.

s/Devonia S. Howes

Notary Public-Minnesota

My Commission Expires January 31, 2020